

OGC HAS REVIEWED.

21 November 1946

MEMORANDUM FOR THE DIRECTOR

Subject: Revision of the Espionage Laws

1. It has been felt that the Espionage Laws of the United States needed strengthening as it was often very difficult to secure indictments or convictions under them. In order to recommend improvements a joint study of these laws was made by G-2, ONI and the FBI, and certain recommendations were formulated and transmitted to the Attorney General. The War Department's copy of the recommendations was forwarded to the Attorney General by the Secretary of War under letter of 27 June 1946, and a copy is attached.

2. The primary difficulty involved is that of proving that the violation of the Espionage Laws was "with intent or reason to believe" that the information "is to be used to the injury of the United States or to the advantage of a foreign nation." It is required that the violators act in bad faith and the penalties apply only when such knowledge is established.

3. It is the thought of the Committee, which formulated the recommendations referred to in paragraph 1, that an amendment is necessary to provide penalties for the wrongful dissemination of information vital to the national defense by persons who legitimately have possession of such information, but against whom it would not be possible to prove "intent or reason to believe" that the dissemination of such information would be used to the injury of the United States or for the benefit of a foreign nation.

4. One section of the Act provides penalties for those who willfully transmit information relating to the national defense which they might lawfully possess to someone not entitled to receive same. However, the Committee felt that even this section was so closely allied to other clauses which did require intent, that it did not afford adequate grounds for prosecution.

5. It has been quite difficult in many cases to secure indictments under this Act. Attention is drawn to the case of the three men who were recently apprehended in Baltimore with photographs of Atom Bomb equipment, who were released after preliminary investigation, although they still may be indicted. There was also the case involving the theft of several hundred classified documents from G-2, ONI, OSS, the State Department and the War Department which found their way to "Amerasia" Magazine. In this case, the Grand Jury failed to bring in an indictment under the Espionage Act.

6. Attention is also called to Recommendation V of the attached War Department dossier, which urges amendment of the Federal Communications Act to permit the use in court as evidence of information obtained through wire-tapping. This would be of material assistance in espionage cases.

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